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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition No. 1680 of 2006

Petitioner		Neelmani Sharma, age 26 years, S/o. Srinath Sharma, R/o. Civil Line, Ward no.14, Mahasamund, Dist. Mahasamund. CG/
		Versus
Respondents	1)	The State of Chhattisgarh, through the Secretary, Home, Department of Home, D.K.S. Bhawan, Raipur, CG.
	2)	The Director Genral of Police (Administration) Police Head Quarter, Raipur, District Raipur, CG.
	3)	The Inspector General of Police, District Raipur, CG.
	4)	Superintendent of Police, Mahasamund, Distt. Mahasamund (CG).

(Writ Petition under Article 226/227 of the Constitution of India)

SB: Hon'ble Shri Justice Satish K. Agnihotri

Present:
Shri Awath Tripathi, counsel for the petitioner.
Shri Sushil Dubey, Govt. Advocate for the State.

ORAL ORDER

(Passed on 8th -5-2007)

By this petition filed under Article 226/227 of the Constitution of India, the petitioner seeks a writ in the nature of certiorari quashing the impugned order dated 22-2-2006 (Annexure P/5) whereunder the petitioner was found disqualified in the examination held in the year 2000 for appointment on the post of Constable on the ground that criminal cases were found pending against him. The petitioner further seeks a direction to the respondents/authorities to grant appointment to him.

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2) The indisputable facts, in nutshell, are that pursuant to the advertisement, the petitioner made an application for appointment to the post of Constable. The petitioner, after having completed successful physical test as well as written test, was informed vide letter dated 01-07-2005 (Annexure P/2) that his name has been found in the selection list of Constable (G.D) and he was directed to appear in the Police Head Quarter on 5-7-2006 for further action. On selection, the petitioner was required to fill-up attestation form (Annexure P/3). Against column No.12, the petitioner was asked to submit the information with regard to the facts of his arrest, prosecution, charge-sheet, imposition of fine, conviction, if any, in the criminal trial, debarring by Public Service Commission in appearing in any of the examinations. Further, whether the petitioner was debarred from any University or his educational institution from writing the examination or whether he was expelled from the University or any educational Institute. On 6-7-2006 the petitioner submitted the information which reads as under:

"हां गिरफ्तार किया गया था मुझ पर अभियोजन चलाया गया था, दो प्रकरण में निरुद्ध किया गया था, मुझसे मुचलका लिया गया था मुझ पर जुर्माना नही किया गया। किसी भी अपराध के लिए न्यायालय द्वारा दोषी नहीं ठहराया गया है सभी प्रकरण गुण दोष के आधार पर निराकृत किये गये है किसी भी लोक सेवा आयोग द्वारा संचालित परीक्षाओं के चयनों में सम्मिलित होने से वर्जित नहीं किया गया है और नाही किसी परीक्षा में बैठने से वंछित किया, या निष्कासित नहीं किया गया है। मेरी जानकारी एवं समग्र प्रयास से संकलित जानकारी के अनुसार निम्न प्रकरण है। 1999–2001 के बीच में 354 का मामला दर्ज हुआ था जिसका विवरण मेरे पास नहीं है जिसमें मैं दोषमुक्त हुआ था।

अपराध क्रमांक	दं.प्र.क. / प्र.क.	न्यायालय का नाम	परिणाम
356 / 199	147 / 2000	विशेष न्यायाधीश, विशेष न्यायालय, रायपुर	दोष मुक्त निर्णय दि. 25. 09.01
	309 / 03	न्यायिक दण्डाधिकारी प्रथम श्रेणी, महासमुंद	दोष मुक्त निर्णय दि. 09. 09.04
483 / 2002	33 / 2003	द्वितीय अतिरिक्त सत्र न्यायालय, महासमुंद	दोष मुक्त निर्णय दि. 09. 02.04

तथा धारा 151 एवं 107/16 का प्रकरण भी था जो कि खत्म हो चुका है।"

3) Thereafter, the petitioner submitted one more affidavit on 9-12-2005 (Annexure P/4) with regard to the period from 1999 to 2001 details of which he could not give at the time of filling up the attestation form, except that he was exonerated in all the criminal cases. The affidavit to that effect was filed as under:

" 2 . यह कि चयन होने के पश्चात् अनुप्रमाणन–फार्म मेरे द्वारा दिनांक 06.07. 2005 को भरा गया। उक्त फार्म के कॉलम नं. 12 में मैंने मेरे विरुद्ध दर्ज प्रकरण और उनके निराकृत होने का विवरण भरा था। जिसमें सन् 1999 से 2001 के बीच 354, भा. दं. वि. का मामला होना भी मेरे द्वारा लिखा गया था।

यह कि 354 भ. दं. वि. का कोई प्रकरण सन् 1999 से 2001 या आज तक मुझ पर कभी नहीं चला। मैंने दाण्डिक प्रकरण क्रमांक 230/01, के प्रकरण के संबंध में ही जानकारी दी थी. तथा धारा का ज्ञान नहीं होने से, 294, 506 (बी), 323/34 के प्रकरण की भूलवश 354 भा. दं. वि. लिख दिया था. उक्त प्रकरण में गर्ल्स स्कूल के सामने लडके खडे होते है, और उसी संबंध में विवाद हुआ था. इस वजह से मैंने अपनी समझ से उक्त प्रकरण की धारा 354 भा. दं. वि. का होना समझ लिया था. उक्त प्रकरण प्रार्थी से रॉजीनामा के आधार पर समाप्त हो चुका है।"

4) It is an admitted position that the petitioner was acquitted in all the cases pending against him and he has given complete details as required in the attestation form. The petitioner had also filed the second affidavit indicating certain omissions in the attestation form much before his candidature for appointment was cancelled.

5) Shri Tripathi, learned counsel appearing for the petitioner submits that this is not a case of ***suprresio veri and suggetio falsi*** as the petitioner has submitted details in the attestation form and some details which he did not remember at that point of time, were submitted subsequently by affidavit dated 19-12-2005 (Annexure P/4). The

petitioner has not attempted to seek employment by making false statement and has not further concealed any fact which was required in the attestation form for any purpose.

6) Per contra, learned counsel appearing for the respondents/State would submit that the details must have been given in the attestation form itself. The subsequent information by way of affidavit was also not complete and the petitioner has further concealed some details which were not stated in the impugned order. The petitioner was acquitted not honourably, but by giving benefit of doubt or by compromise. Thus, the petitioner cannot be held as fit for employment on the post of Constable.

7) I have heard learned counsel for the parties, perused the pleadings and documents appended thereto. It is evident that the petitioner has disclosed the information with regard to the challan, charge-sheet, prosecution, conviction, imposition of penalty, if any, in the attestation form supplemented by the affidavit dated 19-12-2005 (Annexure P/4).

8) The Supreme Court in the case of **Commissioner of Police, Delhi and another Vs. Dhaval Singh**[1], while considering the identical facts, wherein the petitioner did not inform about pendency of criminal case in the attestation form in August 1995, but on 15-11-1995, he voluntarily informed the authority concerned about pendency of criminal case, it was held that the information was conveyed voluntarily wherein he was acquitted before passing the order of cancellation of candidature. The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material.

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[1] (1999) 1 SCC 246

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9) In the case of **Kendriya Vidyalaya Sangathan and others Vs. Ram Ratan Yadav**[2], the Supreme Court held that the object of requiring information in the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents of the respondent as on the date of filling and attestation of the form to judge his suitability to continue in service. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service. This was a case where the candidate has not informed the authority voluntarily removing the error committed by the candidate in the attestation form.

10) The Supreme Court in the case of **B.R. Chowdhury Vs. India Oil Corpn. Ltd. and others**[3] relying on the decision of the Supreme Court in the case of Commissioner of Police, Delhi and another Vs. Dhaval Singh (Supra), held that the candidate is bound by his own affidavit and the mentioned memorandum of agreement. This was also not a case where the candidate voluntarily informed the authorities curing the error committed in the attestation form.

11) In the case of **Secretary, Department of Home Secretary, A.P. and others Vs. B. Chinnam Naidu**[4] held that the object of requiring information in attestation form and declaration thereafter by the candidate is to ascertain and verify the character and antecedents to judge his suitability to enter into or continue in service. When a candidate suppresses material information and/or gives false information, he cannot claim any right for appointment or continuance in service.

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[2] (2003) 3 SCC 437
[3] (2004) 2 SCC 177
[4] (2005) 2 SCC 746

(103)

12) Applying well settled principles of law to the facts of the present case, it appears that the respondent no.4 /authority while passing the order dated 13-3-2006 has not applied his mind properly. The respondent No.4 has gone into the nature of the offence and nature of the acquittal. The respondents have stated in their return that there were total five offences registered against him apart from the preventive action and the petitioner has submitted only four cases. The results indicated in the return of the respondents clearly go to show that in all the cases even according to the respondents, that the petitioner was acquitted of the offences and in one case the matter was compromised. The respondent No.4/authority ought to have applied his mind to the aspect of the matter with regard to the character of the petitioner as to whether he is a proper person for service in the Police Department and whether he is a desirable person to be appointed in Government service is not a subject matter of adjudication. It is true that denial of appointment to a selected candidate has to be governed by the basic principles of service law and by statutory provisions, if any, though he has no right to be appointed. The only issue in the present case is in relation to suppression of facts and material.

13) In view of the foregoing reasons, the impugned order dated 22-2-2006 (Annexure P/5) is quashed and the respondents are directed to consider the attestation form and affidavit dated 9-12-2005 (Annexure P/4) filed by the petitioner afresh, applying their minds to the query mentioned in the column No.12 of the attestation form. The petition is accordingly allowed to the above extent. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju